

IN THE SUPREME COURT OF FLORIDA  
BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

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SC13-1333

INQUIRY CONCERNING A JUDGE No. 12-613

LAURA M. WATSON

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**Judge Watson's Motion for Rehearing**

The Honorable Laura M. Watson, ("Judge Watson") by and through undersigned counsel, respectfully moves for rehearing pursuant to Fla. R. App. P. 9.330 (hereinafter "Motion for Rehearing") on the grounds that this Honorable Court overlooked and/or misapprehended controlling points of law or facts in its Decision. In support of such Motion, Judge Watson states:

**I. Preliminary Statement**

This case involves disputed ethical *allegations* relating to an attorney's fees dispute that occurred nearly a decade ago, from 2002-2004 (hereinafter "*Attorney's Fees Dispute*"). At the time of such dispute, Judge Watson was *not* a judge, a candidate for judicial office, nor performing any judicial functions as contemplated by the Florida Judicial Code of Conduct or Florida's Constitution. After she was

elected to the Broward County Circuit Court bench in November 2012, the JQC began its investigation and prosecution of Judge Watson in this case.

Prior to being elected, Judge Watson was a lawyer for twenty-seven (27) years, with no Florida Bar complaints or other discipline, who enjoyed an excellent reputation of consistently winning complex PIP litigations.<sup>1</sup> Appendix Principal Brief (hereinafter “APB”), **Tab 11**. At the time of her announcement of her candidacy, through the date of filing this brief, Judge Watson met and continues to meet all of the circuit court judicial eligibility requirements set forth in Fla. Const. art. V, §8.

In January 2013, Governor Rick Scott authorized Judge Watson’s commission as a circuit court judge, and for the last two and a half (2 1/2) years she has honorably served the citizens of Broward County in the Family Law division.<sup>2</sup> APB **Tab 35**.

As to the 2002-2004 *Attorney’s Fees Dispute*, which is the genesis of this case, the Florida Bar was aware of it as early as June 2004 when one of the attorneys

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<sup>1</sup> One judge described Judge Watson as “one of the best in this field...” Fishman and Stashak, MD’s v. Progressive Bayside Insurance Company, case no: 01-11598 (56).

<sup>2</sup> A circuit court judge is a Florida constitutional officer pursuant to Fla. Const. art. V, §5.

involved in such dispute, Larry Stewart (hereinafter “Stewart”), admittedly called the Florida Bar to report the circumstances surrounding such dispute<sup>3</sup> (Trial Transcript p. 166). However, Stewart waited until 2008 to file a formal complaint with the Florida Bar as to such *Attorney’s Fees Dispute*. The Florida Bar never filed a Formal Complaint against Judge Watson. After her commission to the circuit court bench, in an unprecedented, and unconstitutional action, the Florida Bar transferred its file to the Florida Judicial Qualifications Commission (hereinafter “FJQC” or “JQC”), and the JQC assumed the investigation for Judge Watson’s *alleged* ethical misconduct in the 2002-2004 *Attorneys’ Fees Dispute*.<sup>4</sup> The JQC filed its *Notice of Formal Charges* on July 24, 2013 formally charging Judge Watson for the 2004 *alleged* ethical misconduct.

*Allegations* of Judge Watson’s misconduct from 2002-2004 were not concealed from or unknown to the public or The Florida Bar, *but rather to the contrary*, were highly scrutinized in the public light. Civil litigation between the parties stemming from the *Attorney’s Fees Dispute* was completed in 2008, and thereafter the

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<sup>3</sup>Although Stewart did not file a formal complaint with the Florida Bar with respect to such dispute at that time, he did so in 2008.

<sup>4</sup> No authority has been asserted by the JQC for the proposition that somehow The Florida Bar can forward its file to the JQC, like a baton toss, and somehow the JQC acquires jurisdiction over it.

*Attorney's Fees Dispute* was written about extensively in newspaper articles and political blogs. The issues regarding the *Attorney's Fees Dispute* were thoroughly vetted during Judge Watson's primary and general elections for circuit court. This Honorable Court's ruling requiring removal of Judge Watson from office overturns a hotly contested election wherein Broward Voters cast almost 400,000 votes in favor of Judge Watson, *a valid candidate*, and decided she should serve as a circuit court judge.

Importantly, neither the FJQC, nor this Honorable Court found Judge Watson guilty of violating the Florida Judicial Code of Conduct. Instead, this Court's ruling held that Judge Watson was responsible for violating the Rules Regulating the Florida Bar, but then imposed the judicial sanction of removal.

**II. Removal, in Contrast with Less Severe Sanctions, Results in this Honorable Court Overturning the Will of the Voters By Adding Some Unverifiable and Unpredictable Eligibility Requirements to Qualify for Election, and Violates the First and Fourteenth Amendments to the U.S. Constitution.**

**A. The Law in Florida on Eligibility for Office**

For purposes of this Motion for Rehearing, it is simply irrelevant whether the contested ethical *allegations* are true or not because eligibility for state office is determined by the Florida Constitution, and no statute or governmental body, such as "FJQC" or this Honorable Court, can alter the eligibility requirements.

These qualification requirements are absolute, and any statute, rule, or law, which restricts eligibility for judicial office beyond the requirements of the Florida Constitution is invalid. Fla. Const. art. V §8. *See also* Norman v. Ambler, 46 So.3d 178, 182 (Fla. 1<sup>st</sup> DCA 2010) (Citations omitted) (“‘[E]ligibility’ for state office is determined solely by the constitutional requirements for holding the state office sought”). Any “doubts about the qualifications of a political candidate” are to be resolved in favor of the candidate. *See* Ruiz v. Farias, 43 So.3d 124, 127 (Fla. 3d DCA 2010) (Citations omitted). Nothing in Florida law permits the FJQC and/or the Florida Supreme Court to overturn the will of the voters by using this process to essentially add some *de facto unverifiable and unpredictable eligibility requirement(s)* after all Florida Constitutional qualifications and eligibility requirements have been met.

By sustaining the FJQC’s interpretation that it has jurisdiction to investigate any justice or judge for any *alleged* or *perceived* pre-judicial misconduct from November 1, 1966 forward (hereinafter “Look Back Period”<sup>5</sup>), without some current violation of the Florida Judicial Code of Conduct<sup>6</sup>, this Honorable Court

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<sup>5</sup> This nearly fifty (50) year Look Back Period becomes one (1) year longer with each passing year.

<sup>6</sup> This Honorable Court finds that this Court and the JQC have jurisdiction over alleged misconduct of an attorney who subsequently becomes a judge “no matter

creates a scenario wherein no judicial candidate could ever be certain they were a qualified candidate for office. The JQC makes the logically flawed connection between some subjective notion of remote conduct and the “present unfitness for office”, which is without foundation or legal justification. Pursuant to such interpretations, a person who (a) has been convicted of a crime, (b) had his/her civil rights restored, and (c) thereafter becomes a Florida Bar member for the requisite number of years, meets the eligibility requirements, and qualifies to run for judicial office, is at risk of removal, even though his/her debt to society has long since been paid. In this case, Judge Watson, who was never alleged to have committed a crime, but rather an *alleged* debatable breach of an ethical duty as a younger lawyer for which the JQC deems forever demonstrates her “present unfitness for office.” Under such disciplinary scheme, no judicial candidate could ever be on fair notice of what pre-judicial conduct, which occurred during the Look Back Period, but does not violate any judicial canons, the FJQC may determine to be within its jurisdiction to investigate, prosecute, discipline, and/or seek removal for, until after the election. Such interpretations are constitutionally vague, and overbroad, and contravene the will of the voters and the rights of the

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how remote” in time the conduct was. Order p. 11 (Citations omitted.)

voters and candidates.

Pursuant to Fla. Const. art. V §8, in order to be eligible for the office to circuit judge, the person must 1) be an elector of the state, which has its own eligibility requirements (*See* Section II. C *infra*), 2) reside in the territorial jurisdiction of the court, and 3) have been for the preceding five (5) years, a member of the bar of Florida. This Honorable Court has interpreted the constitutional clause “member of the bar of Florida” requirement to mean a person who “is a member with the privilege to practice law” in the courts of this state. *See In re Advisory Op. to Gov.*, 17 So.3d 265 (Fla. 2009). To be clear, Judge Watson has always been entitled to practice law in the courts of this state since her admission to the Bar in May of 1985, and meets the other circuit court eligibility requirements.

In *In re Advisory Op. to Gov. supra.*, this Honorable Court *prevented* attorney William S. Abramson from ascending to the bench after election because a pending Bar matter had resulted in a ninety-one (91) day suspension *before his commission* from the Governor. Relying on cases from other state supreme courts, this Honorable Court reasoned:

Therefore, we determine that article V, section 8 of the Florida Constitution contemplates that ‘a member of the bar of Florida’ *is a member with the privilege to practice law.* It follows that a lawyer who is suspended from the practice of law fails to satisfy the constitutional eligibility requirements for a circuit court judgeship.

Abramson is a suspended lawyer. He cannot practice law in the courts of this State and he is therefore not eligible to hold the office of circuit judge in this State.

Id. (Emphasis added). Thereby, this Court advised the Governor that he was not authorized to sign the commission of the circuit judge-elect under suspension. Id.

Eligibility requirements for a circuit court judgeship hinge on whether a person has been for the preceding five (5) years, a member of the bar of Florida with the privilege to practice law. In the instant case, Judge Watson met this Constitutional criterion for twenty-seven (27) years up to and including the time of assuming office, and continues to have the privilege to practice law in the courts of this state. Appropriately, Governor Rick Scott rightfully commissioned her as a circuit court judge. *See also In re Advisory Op. to Gov.*, 192 So.2d 757 (Fla. 1966) (Conversely, the eligibility requirements for a circuit court judge *are not met* when the candidate, though an attorney for nine (9) years, had not been a member of the Florida Bar for the five (5) years preceding his election).

By sustaining the FJQC's interpretation that it has jurisdiction to investigate any justice or judge for any *alleged* or *perceived* pre-judicial misconduct from 1966 forward, without some violation of the Florida Judicial Code of Conduct, this Honorable Court creates a scenario wherein no judicial candidate could ever be certain they were qualified to serve in Florida's judiciary.



The JQC is a constitutional commission and not an official arm of the Court. Within the meaning of the state constitution, it is a permanent disciplinary commission established for the specific purpose to investigate and recommend removal or discipline of a justice or judge for alleged acts of judicial or judicial candidate misconduct. The Florida Supreme Court *solely* derives jurisdiction to remove or discipline a justice or judge from a review of the findings and recommendations of a JQC hearing panel as provided by Fla. Const. art. V, § 12 (c) (1). No other constitutional provision provides this Honorable Court with jurisdiction to remove or discipline a justice or judge. This Court has recognized that it “can impose no discipline [of a judge] without a recommendation from the Commission.” In re Fletcher, 664 So.2d 934, 936 (Fla. 1995). Thus, because the JQC lacked jurisdiction to hear this matter in the first instance, the Florida Supreme Court has no jurisdiction to accept the Commission’s Findings, Conclusions, and Recommendations of the Hearing Panel, and this Honorable Court should reject the JQC’s Final Order and dismiss this case based upon lack of subject-matter jurisdiction. Likewise, in the case of In re Deckle, 308 So.2d 4 (Fla. 1975), this Honorable Court dismissed a pending matter finding that the JQC was without jurisdiction to further pursue the case because their “formal vote was insufficient to base an affirmative recommendation.”

B. The Federal Law on Eligibility for Office<sup>7</sup>

The FJQC's attempt to impose jurisdiction over Judge Watson almost immediately after she was sworn in as a constitutional officer, amounts to an impermissible attack on the validity of the election, which burdens, and implicates rights protected by the First and Fourteenth Amendments to the U.S. Constitution. *See Anderson v. Celebreeze*, 460 U.S. 780, 786-787, 103 S. Ct. 1564, 75 L.Ed.2d 547 (1983); *Ray v. Mortham*, 742 So.2d 1276, 1285 (Fla. 1999). Voters' rights and judicial candidate eligibility are inextricably intertwined, governed by the U.S. Constitution and/or Florida's Constitution, and embody fundamental rights and freedoms. *See* U.S. Const. amend. I, and XIV, and Fla. Const. art. VI, §2. "The declaration of rights expressly states that 'all political power is inherent in the people'". *Treiman v. Malmquist*, 342 So.2d 972, 975 (Fla. 1977), *citing* Fla. Const. art. 1, §1.

After the voters spoke, and the Governor acted, it is simply too late for anyone including the FJQC and/or this Honorable Court to attack the validity of an

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<sup>7</sup> Brief of *Amici Curiae* Dr. Philip Busey, Samuel D. Lopez, Esq., Jay Neal, and Peter Szymanski in Support of Appellant, The Honorable Laura M. Watson (hereinafter "*Amici Curiae*" Brief) is referenced and expressly adopted herein. *See* Appendix **Tab 1**.

election by claiming that *alleged* misconduct from ten (10) years ago warrants removal from office. This Court ratified the FJQC's position that it has jurisdiction over Florida's judiciary for any *alleged* misconduct after November 1, 1966, without some violation of the Florida Judicial Code of Conduct. Such a position eviscerates the political power inherent in the people and established by Fla. Const. art. I, §1. Likewise, the expansion of the FJQC's jurisdiction would defeat voters' and candidates' rights constitutionally protected by Fla. Const. art. VI, §2.

C. The Federal Law Requires Strict Scrutiny of Laws which Impinge on  
Rights Explicitly Protected by the U. S. Constitution

The U.S. Supreme Court has deemed the right to vote to be so fundamental that “any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” Harper v. Virginia Board of Elections, 383 U.S. 663, 667, 86 S. Ct. 1079, 16 L.Ed.2d 169 (1966) (Citations omitted.) When applying strict scrutiny, the restrictions must be “narrowly tailored to serve a compelling state interest,” and “actually necessary to the solution.” Winter v. Wolnitzek, 56 Fed. Supp. 3d 884, 893 (E.D. Ky Oct. 29, 2014).

The U.S. Supreme Court has determined that the right to vote is “a fundamental political right because it is preservative of all rights.” Harper at 667.

In Kramer v. Union Free School District No. 15, 395 U.S. 621, 89 S. Ct. 1986,

23 L.Ed.2d 583 (1969), the U.S. Supreme Court invalidated a New York law that limited voting in school board elections to those who owned or leased real property or had children enrolled in the local public schools. Id. at 622. In Kramer, the U.S. Supreme Court applied the strict scrutiny test, and found in favor of Kramer, a bachelor who was living in his parents' home, and had no children. Id. at 622, 624-626. The U.S. Supreme Court held that the law was not sufficiently tailored to limiting voting to certain interested persons to justify denial of the right to vote to Kramer and "members of his class". Id. at 394.

While Florida's "interest in preserving public confidence in the integrity of the judiciary" is compelling, no legitimate state interest can be shown for giving the FJQC jurisdiction to investigate any justice or judge for any conduct from November 1, 1966 forward. The Florida Bar v. Williams-Yulee, 138 So. 3d 379, 387 (Fla. 2014).

The eligibility standards to run for circuit court judge ensure that only a qualified attorney will be placed on the ballot. *First*, the person must be an elector of the state. Pursuant to Fla. Stat. § 97.041 (1)(a), to be a registered voter in Florida, a person must be:

- 1) at least 18 years of age,
- 2) a United States citizen,

- 3) a legal resident of Florida,
- 4) a legal resident in the county in which that person seeks to be registered, and
- 5) registered pursuant to the Florida Election Code.

However, pursuant to Fla. Stat. § 97.041 (2)(a) and (b), the following persons, who qualify otherwise, are not entitled to register or vote:

- 1) persons who have been adjudicated mentally incapacitated with respect to voting, without having their voting rights restored, and/or
- 2) persons convicted of a felony without having their voting rights restored.

Further, to be eligible to be a circuit court judge, as set forth in II. A. above, that person must “have been for the preceding five years, a member of the bar of Florida”. *See* Fla. Const. art. V §8.

The Florida Constitution places exclusive jurisdiction on the Florida Supreme Court to regulate admission of persons to practice law and discipline of persons admitted pursuant to Art. V, § 15 (1972):

**SECTION 15. Attorneys; admission and discipline**—The supreme court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.

The Supreme Court has designated certain entities as agencies for the purpose of assisting the Court in investigating and disciplining attorney misconduct. “The board of governors, grievance committees, and referees shall have jurisdiction and

powers as are necessary to conduct the proper and speedy disposition of any investigation or cause...” for the discipline of persons admitted to the practice of law. R. Regulating Fla. Bar 3-3.1.

Between the (a) Florida Bar admissions requirements, including background investigation, and bar examination <sup>8</sup>; (b) Florida Bar membership, duties, rules, and obligations with continuing oversight by the Florida Bar and Florida Supreme Court, (c) Florida elector requirements; and (d) Florida judicial qualification requirements pursuant to Fla. Const. art. V §8.; there is a complete system of checks and balances that renders this Honorable Court's adoption of the JQC's interpretation that it has the jurisdiction to investigate any conduct, even if it does not violate the Florida Judicial Code of Conduct, during the nearly fifty (50) year Look Back Period, superfluous, suspect, and discriminatory and creates a partisan judicial selection tool. As detailed in the *Amici Curiae* Brief p. 14, turning a nonpartisan judicial election into a partisan appointment “is an unconstitutional and unchecked<sup>9</sup> scenario capable of repetition, which should be equally repugnant to all voters, judicial candidates, and political parties.” Appendix, ***Tab 1***.

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<sup>8</sup> See Rules of the Supreme Court Relating to Admissions to the Bar, which are attached to the Appendix as ***Tab 2***.

<sup>9</sup> As detailed in this Honorable Court’s own website, the JQC is an “independent agency” “operates under rules it establishes for itself;” and Florida’s governors

With such stringent eligibility qualification requirements already in place, it is extremely difficult to imagine or fathom what legitimate state interest could be asserted to support such a dysfunctional and unconstitutional interpretation.

**III. This Honorable Court’s Ratification of the JQC’s Interpretation of Amendment to Article V. §12(a). Granting Jurisdiction to the FJQC to Investigate any Misconduct of a Sitting Judge, Which Occurred After November 1, 1966, Violates the Due Process Guaranteed by the Florida and U.S. Constitution.**

It is well settled law that an amendment to the state constitution cannot stand if it results in a facial violation of the U.S. Constitution. *See Gray v. Moss*, 115 Fla. 701, 707. (Fla. 1934)(“[A]n amendment to the State Constitution may [] modify an existing provision of the State Constitution; but an amendment to the State Constitution cannot modify the operation of any provision of the Federal Constitution.”)

In In re Inquiry Concerning a Judge, J.Q.C., 357 So.2d 172, 180-181 (Fla. 1978), this Honorable Court refused to apply a 1976 amendment to the Florida Constitution, which changed the standard by which a judge could be removed from office because the judge was not on notice that his past actions could subject him to removal. As stated by this Court:

‘...Under the provisions of the Constitution this Court

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and/or legislature have the only power to remove JQC members.

may exclude from the judiciary those persons whose unfitness or unsuitability bears a rational relationship to his qualifications for a judgeship, so long as the adjudication of unfitness rests on constitutionally permissible standards and emerges from a proceeding which conforms to the minimum standards of due process...’

Due process, guaranteed by Article I, Section 9, Florida Constitution, contemplates notice that an act is a removable offense at the time it is committed. Any other conclusion would expose judicial officers to the unfair and untenable situation in which even innocent acts of today could someday be declared improper and subject them to punishment or removal from office. We cannot approve a rule that would permit a review of every judge’s past conduct each time a change in the law occurs to determine whether innocent conduct of the past has been converted into grounds for discipline under the new law. Judicial officers are justified in relying on the current rule and in conducting themselves accordingly.

(Emphasis supplied)(Citations omitted) *Id.* at 181.

The current rules that judges can rely on are found in the Florida Judicial Code of Conduct, but Judge Watson did not violate any Canons of such Code and could not possibly be on notice that conduct occurring ten (10) years before she became a judge could subject her to punishment or removal.

This Honorable Court’s ratification of the JQC’s interpretation of Fla. Const. art. V §12(a)(1) fails to provide fair notice of prohibited judicial conduct, and would substantially impact other articles of the Florida Constitution. To say that such interpretation of Fla. Const. art. V §12(a)(1) is in direct conflict with Fla.



Const. art. V §8 is a gross understatement. Interpreting Fla. Const. art. V §12(a)(1) to provide the JQC with the jurisdiction over Florida's judiciary for any *alleged misconduct after November 1, 1966*, without some violation of the Florida Judicial Code of Conduct, provides the JQC with a nearly fifty (50) year Look Back Period. Whereas Fla. Const. art. V §8. requires for judicial eligibility a preceding Florida Bar membership requirement of only ten (10) years for supreme court office, and only five (5) years for circuit court and county court offices. By any stretch of imagination, such an interpretation of Fla. Const. art. V §12(a)(1) creates a much more heightened scrutiny in scope and much more expansive look back in time than Fla. Const. art. V §8. This Honorable Court's ratification of the JQC's interpretation of Fla. Const. art. V §12(a)(1), and the plain language of Fla. Const. art. V §8. "are so dramatically different they cannot sit comfortably in the same" room, *let alone constitution*. Donaldson v. Clark, 819 F.2d 1551, 1562 (11<sup>th</sup> Cir. 1987) (Judge Hill's Concurrence).

All provisions of the state constitution "should be given [their] intended meaning and effect, and essential provisions of a Constitution are to be regarded as mandatory." Floridians Against Expanded Gambling v. Floridians for a Level Playing Field, 945 So.2d 553, 560 (Fla. 1<sup>st</sup> DCA 2006). The constitution is to be construed as a whole, with each section and provision to be considered in

coordination with the other provisions, and a construction that allows all provisions to stand is favored. As explained by this Honorable Court:

It is a fundamental rule of construction of our constitution that a construction of the constitution which renders superfluous, meaningless or inoperative any of its provisions should not be adopted by the courts. Where a constitutional provision will bear two constructions, one of which is consistent and the other which is inconsistent with another section of the constitution, the former must be adopted so that both provisions may stand and have effect. Construction of the constitution is favored which gives effect to every clause and every part thereof. Unless a different interest is clearly manifested, constitutional provisions are to be interpreted in reference to their relations to each other, that is in *pari materia*, since every provision was inserted with a definite purpose.

Broward County v. City of Fort Lauderdale, 480 So.2d 631, 633 (Fla. 1985)

(Citations omitted.)

Ultimately with this dangerous, unprecedented, and unconstitutional precedence *now* in place, akin to Judge Watson's case, the FJQC could decide *sua sponte* to lodge an investigation and charge any judge with *alleged* past pre-judicial misconduct, without some violation of the Florida Judicial Code of Conduct. The imprecise and/or unbounded manner in which the JQC interprets its jurisdiction pursuant to Fla. Const. art. V §12(a)(1), which was ratified by this Honorable Court's Decision in this case, fails to give fair notice of misconduct, and would render the amendment unconstitutionally vague, and/or overbroad. *See*

Southeastern Fisheries Association, Inc. v. Department of Natural Resources, 453 So.2d 1351, 1353 (1984).

**IV. This Honorable Court’s Decision Overlooked the FJQC’s Violations of Judge Watson’s Procedural and Substantive Due Process Rights Guaranteed by the Florida and U.S. Constitution.**

**A. The Law in Florida on Due Process**

Judge Watson’s case presents an opportunity for the Florida Supreme Court to exercise its Inherent Powers to address allegations of abuse within the Commission, and determine whether the rules promulgated by the FJQC violate a justice’s or judge’s Procedural Due Process and Substantive Due Process rights, guaranteed by Article I § 9 of the Florida Constitution and the Fourteenth Amendment to the U.S. Constitution.<sup>10</sup> Due Process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. During the proceedings, the FJQC's course of conduct violated Judge Watson’s Due Process rights which prevented her from having a fair hearing. “The denial of due process rights,

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<sup>10</sup> Currently there are no rules, which govern the conduct of the members of the FJQC or the conduct of the meetings held by the Commission. Antithetical of the FJQC’s lack of structure are the comprehensive policies and rules set forth in the Bylaws of the Florida Bar, including the requirement that the current edition of Robert’s Rules of Order govern the conduct of all meetings. *See* Bylaws of the Florida Bar 2-9.1-2-10.1.

including the opportunity to be heard, to testify, and to present evidence, is fundamental error.” Weiser v. Weiser, 132 So.3d 309, 311 (Fla. 4<sup>th</sup> DCA 2014).

The due process violations in this case include, but are not limited to:

(a) the failure of the FJQC to follow its own rules. *See* Amended Principal Brief § 4.4;

(b) the failure of the FJQC to follow Florida's Rules of Civil Procedure, and Judicial Administration, Evidence Code, and Judicial Code of Conduct. *See* Amended Principal Brief § 4.6;

(c) the failure of the FJQC to provide Judge Watson notice and an opportunity to be heard on all issues. *See* Amended Principal Brief § 4.4;

(d) the failure in the FJQC’s "operation and enforcement" of its own Published and *Unpublished* JQC Rules, which violate Judge Watson’s right to Due Process, and some of the *Unpublished* JQC Rules patently violate express constitutional prohibitions. *See* Amended Principal Brief § 4.4;

(e) the failure in the FJQC’s "operation and enforcement" of Fla. Const. art. V, §12 with respect to Judge Watson, which is inconsistent with other provisions of such constitution and/or the FJQC rules. The FJQC’s interpretation of, and this Court’s ratification of the FJQC’s interpretation of Fla. Const. art. V, §12, results in a *de facto* "statute of limitations" period, which goes back to 1966, and becomes

a year longer with each passing year. Such an interpretation would be without notice of application to Judge Watson or any other Florida judges or justices since it has never been used in the last forty (40) years. The JQC's interpretation of Fla. Const. art. V, §12 is unconstitutional both facially and as applied pursuant to the Procedural and/or Substantive Due Process Clauses of the U.S. Constitution. *See* Amended Principal Brief § **4.4, 4.5, 4.6, and 4.7**; and/or

(f) *de facto* asserting as a basis for removal Judge Watson's *alleged* lack of candor during these proceedings. This Honorable Court's Decision asserts that

[it] finds that Judge Watson's actions while a practicing attorney, and her demeanor during these proceedings 'cast[] serious doubts' on her ability to be perceived as truthful by those who may appear before her in her courtroom. Accordingly, we find that removal is the appropriate sanction.

Since Judge Watson was not formally charged with lack of candor, and no particularized findings of lack of candor were made, these findings violate her due process rights. *See In re Davey*, 645 So.2d 398, 406 (1994).

These due process violations go to the heart of the trial, and this case, and usurp its fairness, and amount to fundamental error in these proceedings and the FJQC's proceedings; thereby this Court should not adopt the FJQC's findings and conclusions. *See Grau v. Branham*, 761 So.2d 375, 378 (Fla. 4<sup>th</sup> DCA 2000).

It is well settled law that "an agency violates a person's due process rights if it

ignores the rules it has promulgated which have affected a person's individual rights." Arnesto v. Weidner, 615 So.2d 707, 709 (Fla. 3D DCA 1992) *citing* Morton v. Ruiz, 415 U.S. 199, 94 S. Ct. 1055, 39 L.Ed.2d 270(1974). In this case, Judge Watson identified numerous violations of the FJQC rules, which violated her right to due process.

#### B. The Federal Law on Due Process

First, "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Carey v. Piphus, 435 U.S. 247, 259, 98 S. Ct. 1042, 55 L.Ed.2d 252 (1978). In the proceedings below, Judge Watson moved to disqualify certain members of the Hearing Panel, but these motions were denied. Pursuant to the then existing framework of the Florida Judicial Qualifications Commissions Rules ("FJQCR") and Florida law, Judge Watson had no procedural remedy to have the JQC decisions reviewed prior to the Final Hearing and recommendation by the Hearing Panel.<sup>11</sup> Pursuant to U.S. Supreme Court rulings, the failure to provide an opportunity to have these orders reviewed prior to the Hearing Panel's

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<sup>11</sup> Mere days before Judge Watson's scheduled trial, the JQC posted the unpublished JQC Rules on its website, which replaced the previously posted 1998 published JQC Rules. The previously posted 1998 published JQC Rules did not allow for interlocutory appeals.

recommendation deprives Judge Watson of her constitutionally protected interest in her property without due process under the Fourteenth Amendment of the U.S. Constitution.

In the process below, Judge Watson consistently pointed out the FJQC's deliberate indifference to the various codes and Florida Rules of Court, including Fla. Code Jud. Conduct, Canon 3E, which governs the disqualification of a judge and the requirement that the "judge voluntarily disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification." Fla. Code Jud. Conduct, Canon 3 E, Commentary. In one order, the FJQC claims not to be bound by the Florida Judicial Code of Conduct, notwithstanding the application of the Code to *anyone* whether or not a lawyer who is acting in the capacity of a judge. Certainly, at a minimum, the appellate court judges assigned to Judge Watson's Hearing Panel are bound by the Florida Judicial Code of Conduct.<sup>12</sup> *Not only* is the FJQC's ruling that the Florida Judicial Code of Conduct does not apply to the Hearing Panel counterintuitive, *but also* it is contrary to the plain meaning of the Code. The Florida Judicial Code of

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<sup>12</sup> FJQC Order on Pending Motions and Status Conference, November 20, 2013. The Chair, Honorable Kerry I. Evander is a Fifth DCA judge and the Honorable Robert Morris is a Second DCA judge. Appendix to Principal Brief, ***Tab 23***.

Conduct applies not only to justices of the Florida Supreme Court, district courts of appeal, circuit courts, and county courts, but it applies to anyone whether or not a lawyer who is acting in the capacity of a judge. The Application Section of the Florida Judicial Code of Conduct (which appears at the conclusion of the Code) provides:

Anyone, whether or not a lawyer, who performs judicial functions, including but not limited to a magistrate, court commissioner, special master, general master, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and as such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed.

Any judge responsible for a person who performs a judicial function should require compliance with the applicable provisions of this Code.

Thus, the duty to disclose potential conflicts of interest, established personal relationships, professional associations, or business relationships belongs to each member of the Hearing Panel, and the judges on the Panel are responsible for those who are performing a judicial function to comply with the Florida Judicial Code of Conduct.

Fla. Code Jud. Conduct, Canon 3E places the burden on the judge “to disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes



there is no real basis for disqualification...” Fla. Code Jud. Conduct, Canon 3E (1), Commentary. By necessity then, Judge Watson was left with the task of investigating the FJQC members to try to uncover conflicts of interest and appearances of impropriety or waive any objections thereto. All litigants have the right to an independent, fair and competent tribunal and do not have a duty to investigate a judge’s impartiality. *See Porter v. Singletary*, 49 F.3d 1483, 1489 (11<sup>th</sup> Cir. 1995). Judge Watson should not have had the burden to uncover conflicts of interest of the Hearing Panel members. The interpretation by the FJQC that it is not bound by the Florida Judicial Code of Conduct’s duty to disclose information revealing conflicts of interest is further evidence of the unfairness in the proceedings below, and that the FJQCR does not provide sufficient constitutional safeguards to ensure a fair and impartial tribunal will hear the justice’s or judge’s claims.

The United States Supreme Court has made clear that a fundamental tenet of due process is a fair and impartial tribunal. “The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law...by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find

against him.” Marshall v. Jerrico, 446 U.S. 238, 100 S. Ct. 1610, 64 L.Ed.2d 182 (1980). The Court in Ward v. Village of Monroe, 409 U.S. 57, 59-60, 93 S. Ct. 80, 83, 34 L.Ed.2d 267 (1972) expressly stated that an unbiased proceeding is required in order to satisfy the requirements of due process and that *any unfairness in the proceeding cannot be corrected on appeal*. Id. at 59-60. (Emphasis supplied,)

Pursuant then to the U.S. Supreme Court holdings in Marshall and Ward, the failure of the JQC process to provide a review of these denials for disqualification is a per se denial of the due process clause of the Fourteenth Amendment, and a subsequent review of the FJQC’s recommendation by the Florida Supreme Court does not cure the deficiency.<sup>13</sup> The absence of an opportunity to have a biased member of the FJQC replaced with a fair and impartial panel member is a fatal flaw rendering the entire FJQC system unconstitutional. Likewise, an adjudication that is rendered by a biased tribunal cannot be constitutionally rescued by a subsequent procedure in an unbiased tribunal. Thus, even if the Florida Supreme

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<sup>13</sup> This Honorable Court denied Judge Watson’s Original Petition for Declaratory and Injunctive Relief “without prejudice to raise these claims in her response to the Order to Show Cause”. She raised these claims throughout the proceedings and in her Amended Principal Brief. This Honorable Court completely failed to address any of these claims in its Order.

Court provided a *de novo* review of Judge Watson's previously filed motions to disqualify, this review would not remedy the bias in the initial proceeding. *See Clements v. Airport Authority of Washoe County*, 69 F.3d 321 (9<sup>th</sup> Cir. 1995).

In the United States District Court for the Southern District of Florida, Judge Watson brought a civil action pursuant to 42 U.S.C. §1983 against the FJQC persons in their *individual* capacities, seeking money damages, including punitive damages, and attorney's fees, for violations of the Procedural Due Process, and Substantive Due Process Clauses of the Fourteenth Amendment. Judge Watson's §1983 complaint, was also based upon the District Court's supplemental jurisdiction pursuant to 28 U.S.C. §1367, for Judge Watson's claims pursuant to 42 U.S.C. §1983 against the FJQC persons in their *individual* capacities for state law claims for Malicious Prosecution (seeking money damages, including punitive damages, and attorney's fees), Abuse of Process (seeking money damages, including punitive damages, and attorney's fees), and for Punitive Damages (money damages sought). Recently, the Eleventh Circuit Court of Appeals reinstated Judge Watson's claims on these counts, and remanded the claims to the District Court for further proceedings. *See Appendix **Tab 3***.

Judge Watson's allegations assert that the FJQC *individuals* are acting with malice and in bad faith, and using the mechanisms of government for improper

purpose(s). She also alleges that FJQC *individuals* lacked subject matter jurisdiction over this matter and acted wholly in excess of their jurisdiction. *Finally*, “[t]he purpose of §1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.” Wyatt v. Cole, 504 U.S. 158, 112 S.Ct. 1827, 1830, 118 L.Ed.2d 504 (1992) (Citations omitted). Acting under color of state law, custom, and/or usage, the FJQC Individuals have deprived Judge Watson of her rights under the Fourteenth Amendment of the United States Constitution by their operation and/or enforcement of Fla. Const. art. V, §12, and the aforementioned Published and *Unpublished* JQC Rules in both the Investigative Panel and Prosecutorial Panel phases of their proceedings against her.

### **Conclusion**

Borrowing from the *Amici Curiae* Brief at p. 18, this Honorable Court’s ratification of the JQC’s interpretation that Fla. Const. art. V §12(a)(1) provides it with jurisdiction over Florida’s judiciary for any *alleged misconduct after November 1, 1966*, without some violation of the Florida Judicial Code of Conduct, “threatens voters’ and candidate’s constitutional rights,” without affording [] due process, which is the cornerstone of our Constitution and judicial system:

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.”

Magna Carta, 39.

Allowing such an interpretation of Fla. Const. art. V §12(a)(1), and this Honorable Court’s Decision to stand: (a) violates the Florida and U.S. Constitution; (b) allows the JQC to craft its own *de facto unverifiable and unpredictable eligibility requirement(s)* after all Florida constitutional judicial qualification requirements have been met, and the voters have cast their votes; (c) “will lead to an improper, unchecked, and dangerous recipe of partisan removals and appointments that can be wielded by any party to stack the courts with members of its own party” *Amici Curiae* Brief at pp. 17-18, *citing* Powell v. McCormack, 395 U.S. 486, 547 (1969) (Citations omitted); (d) overturns the will of the voters; (e) eviscerates Fla. Const. art. V §8.; and (f) erodes the rights of Florida’s voters and candidates.

In the administration of justice; to protect Judge Watson’s rights; return the voter’s candidate of choice to her bench, and the people whom she served dutifully; thaw the frozen will of future judicial candidates; protect this Court from being used for improper political purposes; and to ensure and restore the

fundamental constitutional rights of voters and candidates, which rights are inextricably intertwined; this Honorable Court should enter an order granting the Motion for Rehearing, vacate its Decision, and reject the JQC's Recommendations.

WHEREFORE, this Honorable Court should enter an order granting the Motion for Rehearing pursuant to Fla. R. App. R. 9.330(a), vacate its Decision, and reject the JQC's Recommendations.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via the E-Filing Portal on this 3 day of July, 2015 to: The Honorable Laura M. Watson, 17<sup>th</sup> Judicial Circuit, 201 S.E. 6<sup>th</sup> Street, Room 1005B, Fort Lauderdale, Florida 33301 (Email: jwatson@17th.flcourts.org; ltucker@17th.flcourts.org); Robert A. Sweetapple, Esquire, Sweetapple, Bocker

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Pursuant to FJQCR Rule 10(b) a copy is furnished by e-mail to: The Honorable Kerry I. Evander, Chair of the JQC, 300 S. Beach Street, Daytona Beach, Florida 32114 (Email: evanderk@flcourts.org).

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